

(1) The experimental practice encourages advances in mining and reclamation technology or allows a postmining land use for industrial, commercial, residential, or public use (including recreational facilities) on an experimental basis;

(2) The experimental practice is potentially more, or at least as, environmentally protective, during and after mining operations, as would otherwise be required by standards promulgated under subchapter K of this chapter;

(3) The mining operations approved for a particular land-use or other purpose are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practice; and

(4) The experimental practice does not reduce the protection afforded public health and safety below that provided by standards promulgated under subchapter K of this chapter.

(e) Experimental practices granting variances from the special environmental protection performance standards of sections 515 and 516 of the Act applicable to prime farmlands shall be approved only after consultation with the U.S. Department of Agriculture, Soil Conservation Service.

(f) Each person undertaking an experimental practice shall conduct the periodic monitoring, recording and reporting program set forth in the application, and shall satisfy such additional requirements as the regulatory authority or the Director may impose to ensure protection of the public health and safety and the environment.

(g) Each experimental practice shall be reviewed by the regulatory authority at a frequency set forth in the approved permit, but no less frequently than every 2½ years. After review, the regulatory authority may require such reasonable modifications of the experimental practice as are necessary to ensure that the activities fully protect the environment and the public health and safety. Copies of the decision of the regulatory authority shall be sent to the permittee and shall be subject to the provisions for administrative and judicial review of part 775 of this chapter.

(h) Revisions or modifications to an experimental practice shall be proc-

essed in accordance with the requirements of § 774.13 of this chapter and approved by the regulatory authority. Any revisions which propose significant alterations in the experimental practice shall, at a minimum, be subject to notice, hearing, and public participation requirements of § 773.6 of this chapter and concurrence by the Director. Revisions that do not propose significant alterations in the experimental practice shall not require concurrence by the Director.

[48 FR 9484, Mar. 4, 1983, as amended at 65 FR 79669, Dec. 19, 2000]

§ 785.14 Mountaintop removal mining.

(a) This section applies to any person who conducts or intends to conduct surface mining activities by mountaintop removal mining.

(b) Mountaintop removal mining means surface mining activities, where the mining operation removes an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided for in 30 CFR 824.11(a)(6), by removing substantially all of the overburden off the bench and creating a level plateau or a gently rolling contour, with no highwalls remaining, and capable of supporting postmining land uses in accordance with the requirements of this section.

(c) The regulatory authority may issue a permit for mountaintop removal mining, without regard to the requirements of §§ 816.102, 816.104, 816.105, and 816.107 of this chapter to restore the lands disturbed by such mining to their approximate original contour, if it first finds, in writing, on the basis of a complete application, that the following requirements are met:

(1) The proposed postmining land use of the lands to be affected will be an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use and, if—

(i) After consultation with the appropriate land-use planning agencies, if any, the proposed land use is deemed by the regulatory authority to constitute an equal or better economic or public use of the affected land compared with the pre-mining use;

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(ii) The applicant demonstrates compliance with the requirements for acceptable alternative postmining land uses of paragraphs (a) through (c) of § 816.133 of this chapter;

(iii) The applicant has presented specific plans for the proposed postmining land use and appropriate assurances that such use will be—

(A) Compatible with adjacent land uses;

(B) Obtainable according to data regarding expected need and market;

(C) Assured of investment in necessary public facilities;

(D) Supported by commitments from public agencies where appropriate;

(E) Practicable with respect to private financial capability for completion of the proposed use;

(F) Planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

(G) Designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

(iv) The proposed use would be consistent with adjacent land use and existing State and local land use plans and programs; and

(v) The regulatory authority has provided, in writing, an opportunity of not more than 60 days to review and comment on such proposed use to the governing body of general purpose government in whose jurisdiction the land is located and any State or Federal agency which the regulatory authority, in its discretion, determines to have an interest in the proposed use.

(2) The applicant demonstrates that in place of restoration of the land to be affected to the approximate original contour under §§ 816.102, 816.104, 816.105, and 816.107 of this chapter, the operation will be conducted in compliance with the requirements of part 824 of this chapter.

(3) The requirements of 30 CFR 824 are made a specific condition of the permit.

(4) All other requirements of the Act, this chapter, and the regulatory program are met by the proposed operations.

(5) The permit is clearly identified as being for mountaintop removal mining.

(d)(1) Any permits incorporating a variance issued under this section shall be reviewed by the regulatory authority to evaluate the progress and development of mining activities to establish that the operator is proceeding in accordance with the terms of the variance—

(i) Within the sixth month preceding the third year from the date of its issuance;

(ii) Before each permit renewal; and

(iii) Not later than the middle of each permit term.

(2) Any review required under paragraph (d)(1) of this section need not be held if the permittee has demonstrated and the regulatory authority finds, in writing, within three months before the scheduled review, that all operations under the permit are proceeding and will continue to be conducted in accordance with the terms of the permit and requirements of the Act, this chapter, and the regulatory program.

(3) The terms and conditions of a permit for mountaintop removal mining may be modified at any time by the regulatory authority, if it determines that more stringent measures are necessary to insure that the operation involved is conducted in compliance with the requirements of the Act, this chapter, and the regulatory program.

[44 FR 15370, Mar. 13, 1979, as amended at 48 FR 39904, Sept. 1, 1983; 52 FR 39183, Oct. 20, 1987; 81 FR 93379, Dec. 20, 2016; 82 FR 54965, Nov. 17, 2017]

§ 785.15 Steep slope mining.

(a) This section applies to any persons who conducts or intends to conduct steep slope surface coal mining and reclamation operations, except—

(1) Where an operator proposes to conduct surface coal mining and reclamation operations on flat or gently rolling terrain, leaving a plain or predominantly flat area, but on which an occasional steep slope is encountered as the mining operation proceeds;

(2) Where a person obtains a permit under the provisions of § 785.14; or

(3) To the extent that a person obtains a permit incorporating a variance under § 785.16.